

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Connect America Fund)	WC Docket No. 10-90
)	
ETC Annual Reports and Certifications)	WC Docket No. 14-58
)	
Establishing Just and Reasonable Rates for Local Exchange Carriers)	WC Docket No. 07-135
)	
Developing a Unified Inter-carrier Compensation Regime)	CC Docket No. 01-92

**COMMENTS OF
THE NATIONAL TRIBAL TELECOMMUNICATIONS ASSOCIATION**

I. INTRODUCTION AND SUMMARY

The National Tribal Telecommunications Association (NTTA) provides these comments in response to the Notice of Proposed Rulemaking issued in the above-captioned proceedings.¹

NTTA consists of Tribally-owned communications companies and broadband providers including Cheyenne River Sioux Telephone Authority, Fort Mojave Telecommunications, Inc., Gila River Telecommunications, Inc., Hopi Telecommunications, Inc., Mescalero Apache Telecom, Inc., Saddleback Communications, San Carlos Apache Telecommunications Utility, Inc., Tohono O'odham Utility Authority, Warm Springs Telecom, and the Nez Perce Tribe. NTTA's mission is to be the national advocate for telecommunications service on behalf of its member companies and

¹ *In the Matter of Connect America Fund, et. al.*, Report and Order, Third Order on Reconsideration, and Notice of Proposed Rulemaking, WC Docket Nos. 10-90, et. al. (FCC 18-29, rel. March 23, 2018) (*NPRM*)

to provide guidance and assistance to members who are working to provide modern telecommunications services to Tribal lands.

In these comments, NTTA will address two vital issues to its members and Tribal areas across the country: (1) the Commission's proposal for revised offers of model-based high cost support for Tribal areas, and (2) changes necessary to the operating expense limitations for NTTA members and other rate-of-return carriers serving Tribal areas.

I. THE COMMISSION'S PROPOSED "TRIBAL BROADBAND FACTOR" IS INSUFFICIENT

The Commission proposes to initiate new Alternate Connect America Model (ACAM) offers of support to carriers that did not accept the last round of ACAM offers. One proposed new offer would be limited to carriers that receive less support as compared to current legacy support received. The other, "broader" offer, would be available to all carriers currently receiving legacy support.² The Commission proposes a number of changes to the ACAM mechanism for these new offers, including the lowering of the high cost threshold – the amount the recipient carrier should typically receive through customer charges – to \$39.38 (a 25% reduction from the overall threshold of \$52.50) for locations served on Tribal lands.³ The Commission also proposes to base these new offers at a per-location funding cap of \$146.10 and, as an alternative, \$200.⁴

To be clear, the Commission's "Tribal Broadband Factor" (TBF), while appreciated, is not similar to the TBF NTTA proposed in this proceeding and advocated for on numerous occasions.⁵

² NPRM at 144

³ NPRM at 117-120

⁴ *Id.*, at 144

⁵ See Comments Filed by NTTA on May 12, 2016, Reply Comments filed June 13, 2016 and August 25, 2016; Ex Parte filings made by NTTA on Nov. 9, 2016, Oct. 18, 2016, Sep. 22, 2016, Sep. 16, 2016, Jul. 13, 2016, May 12,

In review, NTTA proposed that any RoR carrier serving locations in Tribal areas would be eligible to receive 1.25 times the legacy support currently received. The estimated total support for NTTA's proposal was \$25 million for all RoR carriers serving Tribal areas (not just NTTA members), which it recommended come from the high cost reserves. Conversely, one of the Commission's ACAM-related offerings in the *NPRM* appears to be available only for carriers that would receive less support as compared to current legacy system support.

As to the new offer of ACAM support that would be available only to so-called "glide path" carriers, one offer would reflect a per-location funding cap of \$146.10, and the other offer would reflect a \$200 per-location funding cap. Both offers would reduce the high cost threshold by 25% for locations located on Tribal lands as stated above. In order to better assess these proposals, the Wireline Competition Bureau released ACAM results reflecting the revisions proposed by the Commission in the *NPRM*.⁶ The results, as would be expected for a mechanism designed only for less support, for NTTA members are not promising⁷:

2016, Nov. 4, 2015, Nov. 2, 2015, Oct. 23, 2015, and Jun. 19, 2015; Ex Parte filings made by NTTA and Gila River Telecommunications, Inc. on Dec. 15, 2016, Mar. 2, 2016, Feb. 29, 2016, Feb. 23, 2016, Feb. 9, 2016, Dec. 4, 2015, Nov. 20, 2015, Nov. 18, 2015, Nov. 9, 2015, and Oct. 15, 2015

⁶ *Wireline Competition Bureau Releases Illustrative Model Results to Aid Preparation of Comments in Response to 2018 Rate-or-Return Reform NPRM*, Public Notice, WC Docket No. 10-90, released May 11, 2018 (DA 18-481) (*ACAM Offer Notice*)

⁷ NTTA member Hopi Telecommunications, Inc. is not included due to current receiving ACAM support. NTTA member Tohono O'Odham Utility Authority is not included as the proposed ACAM glide path offer would result in greater support than currently received

Holding Company	Total Non-Tribal and Tribal Annual Model-Based Support Offer (\$146.10 Funding CAP) From Report 12.1	Total Non-Tribal and Tribal Annual Model-Based Support Offer (\$200 Funding CAP) From Report 13.1	2017 HCLS and CAF BLS	Difference 12.1	Difference 13.1
Fort Mojave Telecommunications, Inc.	\$ 112,425	\$ 120,833	\$ 2,085,861	\$ (1,973,436)	\$ (1,965,028)
Gila River Telecommunications, Inc.	\$ 469,841	\$ 513,688	\$ 7,865,586	\$ (7,395,745)	\$ (7,351,898)
Saddleback Communications Inc.	\$ 169,290	\$ 178,573	\$ 1,987,683	\$ (1,818,393)	\$ (1,809,110)
San Carlos Apache Telecommunications Utility, Inc.	\$ 1,020,765	\$ 1,128,025	\$ 3,354,969	\$ (2,334,204)	\$ (2,226,944)
Mescalero Apache Telecom, Inc.	\$ 965,001	\$ 1,094,764	\$ 2,105,610	\$ (1,140,609)	\$ (1,010,846)
Cheyenne River Sioux Tribe Telephone Authority	\$ 2,286,135	\$ 2,767,161	\$ 4,626,726	\$ (2,340,591)	\$ (1,859,565)
Totals	\$ 5,023,456	\$ 5,803,044	\$ 22,026,435	\$ (17,002,979)	\$ (16,223,391)

In regard to the Commission’s proposal for a “broader new model offer” of ACAM support, based on a \$146.10 (or “some other amount”) per location funding cap and the other revisions noted in regard to the new “glide path” offers, NTTA offers the following.⁸ Only NTTA member Tohono O’Odham Utility Authority would appear to be eligible to receive *increased* support under this scenario, while all other NTTA members would see decreased support.⁹ While NTTA strongly urges the Commission adopt NTTA’s TBF, it supports a broader offer of ACAM support if (1) the offer is voluntary, (2) NTTA’s TBF is made available to RoR carriers serving Tribal areas where the broader ACAM offer is declined, and perhaps most importantly, (3) the Commission resolves the overall RoR legacy budget problems noted in the *NPRM*.¹⁰

It is difficult to imagine a scenario where \$16-\$17 million in *reduced* support will help NTTA members *increase* broadband deployment or assist in continuing operations, maintenance, and debt service. Thus, NTTA strongly urges the Commission to abandon the “TBF” as it relates to glide path carriers contained in the *NPRM* and instead adopt the TBF proposed by NTTA. In the alternative, if the Commission adopts the “broader” model offer, where some carriers could

⁸ *NPRM* at 144

⁹ NTTA assumes the Commission’s “TBF” revisions would apply to this broader new model offer, as would other revisions included in the ACAM offer report 13, such as not excluding study areas with greater than 90 percent 10/1 Mbps broadband deployment.

¹⁰ See *NPRM* at 103-116

receive increased support, NTTA recommends the Commission adopt the NTTA TBF for those carriers serving Tribal areas that do not receive increased support under the broader ACAM offer.

In review, NTTA's TBF would be available to all non-ACAM RoR carriers serving Tribal areas, and would provide a 25% increase to HCLS and CAF BLS. For NTTA members, contrast this proposal with the Commission's "TBF" that would result in a 73% - 77% *reduction* in support. NTTA's TBF would provide for the increased support over a ten-year term, with participation being voluntary. In exchange for the increased support, recipients would be subject to certain buildout obligations in addition to the baseline obligations attached to the receipt of legacy support. However, the key feature of NTTA's TBF is that it would provide for *increased* support to all recipients in exchange for buildout obligations. Both Commissioner Clyburn and Rosenworcel expressed support for NTTA's TBF:

"In sum, this item should have gone further. We could have comprehensively addressed not only the Tribal Broadband Factor and operational expenditure limitations, but sough comment on additional incentives for Tribal broadband deployment."¹¹

"I dissent in part, however, because there is so much more to do and I regret that we are not doing it here and now. Over the last two years, the Commission has had an active proceeding concerning the application of a Tribal Broadband Factor for legacy carriers that would more broadly assist with deployment in Tribal lands. The record is complete. The data is in. It's past time for the Commission to resolve what is outstanding and develop a bigger plan to address the unacceptable state of broadband deployment on Tribal lands."¹²

¹¹ *Tribal Opex Relief Order*, Statement of Commissioner Mignon L. Clyburn, Approving in Part and Dissenting in Part

¹² *Id.*, Statement of Commissioner Jessica Rosenworcel Approving in Part and Dissenting in Part

Based on the above, and the fact that no party opposed NTTA's TBF proposal in comments, the Commission should abandon its ACAM-based "TBF" and instead renew consideration and adoption of NTTA's proposal.

II. THE COMMISSION SHOULD ELIMINATE OR REVISE THE OPERATING EXPENSE LIMITATION FOR CARRIERS SERVING TRIBAL AREAS

The Commission adopted an operating expense limitation in the 2015 RoR Reform Order that limited the amount of expenses recoverable in HCLS and CAF BLS based on a regression-generated per-location amount plus 1.5 standard deviations. In the March Third Order on Reconsideration, the Commission decided to add an inflationary factor to the caps¹³, and in the NPRM requests comment on revising the opex limitation.¹⁴

NTTA has requested and advocated for an exception for RoR carriers serving Tribal areas, which the Commission addressed in a recent Report and Order.¹⁵ While NTTA greatly appreciates the Commission's actions to partially mitigate the adverse effects of the operating expense limitations on its members, the action did not go far enough. First, the relief granted does not remove the operating expense limitation in total, and instead increases the 1.5 standard deviations to 2.5. Second, it applies conditions to receiving the relief that are unrelated to operating expenses and therefore unnecessarily exclude some Tribally-owned carriers. Even though NTTA advocated for the change from 1.5 to 2.5 standard deviations, with the

¹³ NPRM at 85

¹⁴ *Id.*, at 168

¹⁵ *In the Matter of Connect America Fund*, Report and Order, WC Docket No. 10-90, rel. April 5, 2018 (FCC 18-37) (*Tribal Opex Relief Order*)

Commission's decision to attach conditions to the relief that have nothing to do with operating expense levels and in fact could act to discourage investment, NTTA now urges the Commission to eliminate the opex limitation in its entirety for RoR carriers serving predominantly Tribal areas. In the alternative, NTTA suggests the Commission eliminate the conditions placed on receiving the opex limitation relief adopted in the *Tribal Opex Relief Order*.

In the *Tribal Opex Relief Order*, the Commission added two conditions to affected companies receiving the relief: (1) the carrier has not deployed broadband service of 10 Mbps download/1 Mbps upload to 90 percent or more of the housing units on the Tribal lands in its study area, and (2) unsubsidized competitors have not deployed broadband service of 10/1 Mbps to 85 percent or more of the housing units in the study area.¹⁶ Even though the Commission recognizes "there are unique costs associated with serving Tribal lands"¹⁷ the Commission adds these conditions without notice, opportunity for comment, or the other processes normally associated with a decision such as this.¹⁸

Given the conditions adopted by the Commission in the *Tribal Opex Relief Order*, NTTA recommends the Commission remove all opex limitations for carriers serving predominantly Tribal lands. The addition of the condition that any carrier with 90% or greater 10/1 Mbps broadband deployment cannot receive the relief consists of a disincentive in regard to broadband deployment. For carriers nearing the 90% threshold, the Commission's condition could cause a disincentive to further broadband deployment that would cause the carrier to cross the

¹⁶ *Id.*, at 7

¹⁷ *Id.*, at 5

¹⁸ NTTA notes Chairman Pai's statement that the Tribal Opex Order does not go far enough and "doesn't help certain carriers...such as Mescalero Apache Telecom, Inc. in New Mexico."

threshold. NTTA does not believe the Commission desires this type disincentive to be attached to its efforts to increase broadband deployment in Tribal areas.

In addition, the condition tied to broadband deployment does not logically relate to the level of operating expenses incurred in a given area. Instead, operating expenses are a function of operating and maintaining the network in place, providing customer service, performing billing functions, and engaging in the overall management of the company. These expenses would be incurred, and at a higher level in Tribal areas, regardless of the percent of 10/1 Mbps deployment in an area.

As documented by NTTA and others, carriers serving Tribal areas incur unique types and levels of operating expenses, leading to the need for operating expense limitation relief. The types of expenses unique to serving Tribal areas include rights of way access and easements from the Bureau of Indian Affairs, cultural clearances, and unique environmental policies. In addition, labor costs can be high due to Tribal hiring requirements and associated training needs. Finally, and as recognized by the Commission itself, “Tribal governments, and by extension, Tribally-owned and operated carriers, play a vital role in serving the needs and interests of their local communities, often in remote, low-income, and underserved regions of the country. Tribally-owned and operated carriers serve cyclically impoverished communities with a historical lack of critical infrastructure. Reservation-based economies lack fundamental similarities to non-reservation economies and are among the most impoverished economies in the country. Tribal

Nations also cannot collateralize trust land assets, and as a result, have more limited abilities to access credit and capital.”¹⁹

Based on the above discussion, NTTA urges the Commission to eliminate, in its entirety, the operating expense limitation for NTTA members and other RoR carriers predominantly serving Tribal areas. In the alternative, and for reasons discussed above, the Commission should, at the very least, remove the conditions adopted in the *Tribal Opex Relief Order* related to broadband deployment and competitive overlap.

CONCLUSION

While NTTA appreciates the increased attention being paid to Tribal areas by the Commission, the fact remains that in regards to the issues discussed above – the “TBF” and operating expense limitation – recent Commission actions have not been sufficient and, in the case of the Tribal Opex Relief Order, are harmful and result in disincentives to invest in broadband infrastructure.

NTTA therefore recommends the Commission adopt NTTA’s Tribal Broadband Factor proposal for RoR carriers serving Tribal areas by itself or in conjunction with a possible broader offer of ACAM support for all carriers currently receiving support via the legacy mechanisms.

NTTA also recommends eliminating the operating expense limitations for carriers predominantly serving Tribal areas, or in the alternative remove the conditions adopted in the Tribal Opex Relief Order related to broadband deployment and competitive overlap.

¹⁹ *In the Matter of Connect America Fund, et. al.*, Report and Order and Further Notice of Proposed Rulemaking (FCC 11-161, rel. November 18, 2011) at 1059

Respectfully Submitted,

Godfrey Enjady
President
National Tribal Telecommunications Association

May 25, 2018